

DOCUMENT NUMBER: 08-EUC-0036
PROJECT NUMBER: C4-089-71643
PROPERTY CATEGORY: 2

Register of Deeds
Kurtis L. Nichols
Book: 4778 Page: 31
Line #: 36155501-17
Date Recorded: 01/27/2010 08:04:38.23 / 14

ENVIRONMENTAL USE CONTROL AGREEMENT

ONEOK, INC. (d.b.a. Kansas Gas Service), an Oklahoma corporation registered in Kansas, having a mailing address of P.O. Box 871 Tulsa, Oklahoma, 74102-0871, hereinafter referred to as "the Owner", is the owner of real property known as the Former Manufactured Gas Plant – Topeka Site, at 200 Southeast 1st Street in the city of Topeka, Kansas 66607, as shown on the map attached hereto as Exhibit A, hereinafter referred to as "the Property", and more particularly described by the following legal description:

A portion of Even Lots 134 through 144 and a portion of the 20-foot vacated alley lying adjacent to Lot 134, Cranes Addition to the City of Topeka, Shawnee County, Kansas, more particularly described as follows:

BEGINNING at the Southeast Corner of Lot 144, said Cranes Addition, thence on an assumed bearing of North 72°58'21" West, along the Northerly line of Southeast 1st Avenue, a distance of 170.00 feet; THENCE North 17°00'20" East a distance of 109.60 feet; THENCE South 72°48'44" East a distance of 170.00 feet to a point on the Easterly line of said Lot 144; THENCE, along said Easterly line of Lot 144, South 17°00'19" West a distance of 109.13 feet to the POINT AND PLACE OF BEGINNING. Said tract contains 0.427 acres, more or less.

And which shall likewise include any and all parcels contained therein.

WHEREAS the Owner has requested, by application to the Kansas Department of Health and Environment, hereinafter referred to as "KDHE", to restrict, prohibit and/or limit certain uses of the Property in accordance with Kansas Statutes Annotated (K.S.A.) 2007 Supp. 65-1,221 *et seq.*

KDHE has approved the Owner's application to restrict, prohibit, and/or limit certain uses of the Property since residual contamination, which exceeds department standards for unrestricted residential use, remains on the Property.

The conditions at the Property as of the date of KDHE's approval of the application are as follows:

A removal action was conducted at the Property in 2004 for soils impacted by former manufactured gas plant operations. Final confirmation results indicated various polycyclic aromatic hydrocarbon (PAH) compounds remain in soil at the Property at concentrations exceeding their corresponding KDHE Tier 2 RSK residential or non-residential use (soil and soil-to-groundwater pathway) screening values as established in the *Risk-Based Standards for Kansas RSK Manual – 4th Version* (RSK), dated June

DOCUMENT	PROJECT	PROPERTY
NUMBER: 08-EUC-0036	NUMBER: C4-089-71643	CATEGORY: 2

2007. Soil contamination remains between two and 31 feet below the ground surface with greater concentrations of PAH compounds detected in the shallower soil. Excavated areas were backfilled with clean, imported fill and covered with six inches of asphalt.

Arsenic, benzene, benzo (a) anthracene, benzo (b) fluoranthene and lead have been detected in groundwater at the Property at concentrations exceeding either their corresponding primary maximum contaminant levels or KDHE Tier 2 residential/nonresidential screening values.

KDHE has determined, based on current conditions at the Property, and other information pertaining to the Property, that environmental use controls are appropriate to ensure future protection of public health and the environment, subject to the conditions herein. Therefore, in accordance with K.S.A. 2007 Supp. 65-1,226 and the rules and regulations promulgated thereunder, the Property is hereby designated by KDHE as a Category 2 property.

The Owner acknowledges that this Agreement runs with the land and is binding on all successors in interest in the Property pursuant to K.S.A. 2007 Supp. 65-1,227(b); and is enforceable by KDHE pursuant to K.S.A. 2007 Supp. 65-1,229, unless and/or until such requirements are mutually terminated in writing by KDHE and Owner or Owner's successor in interest. For purposes of the obligations set forth in this document, "Owner" shall be deemed to include the current Owner and any and all successors in interest.

This Agreement shall be recorded, by the Owner, with the Shawnee County Register of Deeds for the purposes of providing notice of the environmental use controls, protecting public health and the environment, and to prevent interference with the operation, performance, and/or maintenance of any remedial actions on the Property.

RESTRICTIONS, PROHIBITIONS AND LIMITATIONS:

Due to the environmental conditions described above, it is the desire and intention of the Owner to restrict, prohibit, and/or limit the following uses of the Property:

- A. The Property shall not be used for residential purposes of any type including, but not limited to, a residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium; or public use area, including a school, educational center, day care center, playground or similar structure, unrestricted outdoor recreational area, or park.
- B. The Owner shall not allow water wells to be drilled, constructed, or used on the Property for domestic purposes, which use involves or may involve human consumption and/or other possible human contact uses. This restriction does not prohibit drilling, construction or use of water wells for the purpose of containing product or contamination, or for contaminated ground water recovery, monitoring, or other remediation activities as approved in writing by

DOCUMENT	PROJECT	PROPERTY
NUMBER: 08-EUC-0036	NUMBER: C4-089-71643	CATEGORY: 2

KDHE.

- C. The Owner shall not file or petition to initiate re-zoning of the Property without fifteen (15) days prior notification to KDHE.
- D. KDHE shall be provided with notification fifteen (15) calendar days prior to any excavation activities.
- E. KDHE may require sampling of soils prior to, during or after any excavation activities. Based on the potential hazards associated with the soil disturbance activities, KDHE may deny the request to disturb the soils or may require specific protective or remedial actions for allowing such soil disturbance activities to occur on the Property.
- F. The Owner shall inform all easement holders, contractors and/or other workers performing any excavation activities on the Property, prior to such activities, of the potential hazards associated with the direct contact and/or transport of any potentially contaminated and/or hazardous soil or other material from the Property. Easement holders, contractors and/or workers shall also be informed by the Owner of any potential hazards associated with releases from contaminated media located on the Property.
- G. The Owner acknowledges that structural impediments (i.e., buildings, underground water mains) existing at the time of cleanup made complete remediation of all soil contamination on this Property impracticable. If the structural impediments on this Property are removed or modified in such a manner as to provide for exposure to soil contamination, the Owner shall notify KDHE no less than fifteen (15) calendar days prior to removal or modification of such structural impediments. KDHE may require that soils be tested to determine any additional hazards to human health and the environment from the exposed soil. Based on the potential hazards associated with the exposed soil as determined by KDHE, KDHE may require specific protective or remedial actions to prevent future impacts to human health and the environment.
- H. The Owner shall preserve, protect and replace, as necessary, all permanent survey markers and benchmarks and all environmental monitoring stations that may be installed on the Property.
- I. The Owner shall evaluate the vapor intrusion pathway with KDHE prior to the change in use of buildings on the Property, or the new construction thereof.

LOCAL ORDINANCES AND ZONING:

The Owner and KDHE acknowledge that the following local ordinances and zoning requirements in place at the time of recording this Agreement shall be used in addition to the restrictions, prohibitions and limitations set forth in this Agreement.

DOCUMENT	PROJECT	PROPERTY
NUMBER: 08-EUC-0036	NUMBER: C4-089-71643	CATEGORY: 2

The Property is zoned I-2 Heavy Industrial by the City of Topeka Planning Department, Topeka, Kansas.

ACCESS:

The Owner hereby agrees and conveys to KDHE, its agents, contractors, and employees, access to the Property for the term of this Agreement to enter or come upon the Property to inspect the Property and perform any required action (i.e., monitoring, sampling, etc.) KDHE deems necessary for any one or more of the following purposes:

1. Ensuring that use, occupancy, and activities of and at the Property are consistent with this Agreement;
2. Inspecting protective structures and any other remedial systems to ensure their designed operation, performance and structural integrity;
3. Documenting environmental conditions of and at the Property;
4. Ensuring implementation and enforcement of the requirements, restrictions, prohibitions, and other limitations described in this Agreement; and/or
5. Performing any additional investigations or remediation deemed necessary by KDHE to protect public health and the environment.

FUNDING:

The Owner hereby agrees to submit to KDHE a one-time payment of \$7,200 to compensate KDHE for costs incurred to perform inspections and tracking of the terms and requirements of this Agreement. The Owner acknowledges that the funding requirement for this Agreement is based on the size of the Property, physical properties of residual contamination and frequency of KDHE's anticipated inspections and inspection costs.

DURATION:

The Owner hereby agrees that this Agreement extends in perpetuity unless and/or until removal following approval by KDHE pursuant to K.S.A. 2007 Supp. 65-1,227.

MONITORING AND INSPECTION REQUIREMENTS:

Groundwater monitoring, currently overseen by the KDHE-Bureau of Environmental Remediation under the auspices of the State Cooperative Program, is conducted under a Consent Order Agreement (Case No. 94-E-0172) Amendment signed by the KDHE Secretary on May 5, 2003, and mutually agreed to by ONEOK, INC., formerly known as WAI Inc.

DOCUMENT	PROJECT	PROPERTY
NUMBER: 08-EUC-0036	NUMBER: C4-089-71643	CATEGORY: 2

KDHE shall visually inspect the Property once every five (5) years documenting the condition and current uses of the Property to verify the Property is being used as indicated herein. KDHE shall consider modifications of the frequency of inspection and reporting if warranted by technical data.

MAINTENANCE REQUIREMENTS:

The Owner hereby agrees to provide post-construction maintenance of the ground surface to facilitate surface water runoff and drainage of areas where source removals have been conducted. Maintenance involves inspection and repairs that may include addition of AB-3 Aggregate, sealing of cracks, or asphalt replacement to correct the effects of settlement, subsidence or other events which may allow residual contamination to infiltrate into the groundwater.

OTHER TERMS AND CONDITIONS:

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any sale, lease, conveyance or other transfer of the Property. The notice shall include the name and business address (if applicable) of the transferee and the expected date of transfer.

Within fifteen (15) calendar days of real property conveyance, the Owner hereby agrees to provide KDHE a copy of the recorded deed with legal description and corresponding survey map for which this Agreement applies.

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any land use changes at the Property.

The Owner acknowledges that the requirements in this Agreement may not be extinguished, limited or impaired through adverse possession, abandonment, waiver, lack of enforcement, or other common law principles, pursuant to K.S.A. 2007 Supp. 65-1,227(e).

The Owner shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee or transferee to comply with the terms of this Agreement. The failure to include such a provision shall not affect the validity or applicability to the Property of this Agreement.

This Agreement may be modified by mutual written agreement by the Owner and KDHE. Within thirty (30) calendar days of executing an amendment, modification, or termination of this Agreement, the Owner shall record such amendment, modification, or termination with the Shawnee County Register of Deeds, and within thirty (30) calendar days thereafter, the Owner shall provide a copy of the recorded amendment, modification, or termination to KDHE that bears the seal and/or notarized signature of the Register of Deeds.

DOCUMENT	PROJECT	PROPERTY
NUMBER: 08-EUC-0036	NUMBER: C4-089-71643	CATEGORY: 2

ENFORCEABILITY:

If the terms of this Agreement are not being implemented by the Owner or contamination at the Property presents a hazard to public health or the environment, KDHE may take such action as authorized by K.S.A. 2007 Supp. 65-1,229, including:

- A. Issue an order directing the Owner to correct any deficiencies and fully implement the terms of this Agreement.
- B. Issue an order retracting this Agreement and any remedial action at the Property and requiring the Owner to implement a remedial action at the Property to attain a cleanup standard that will allow for unrestricted use of the Property.

EFFECTIVE DATE OF AGREEMENT:

The Owner shall provide to KDHE a copy of this Agreement bearing the seal or notarization of the Register of Deeds in **Shawnee County, Kansas** within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

The Owner shall provide KDHE with funding as determined by KDHE in accordance with K.S.A. 2007 Supp. 65-1,226 within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

Proper recording of all necessary documents and submission of required funding shall be conditions precedent to the effectiveness of this Agreement.

DOCUMENT	PROJECT	PROPERTY
NUMBER: 08-EUC-0036	NUMBER: C4-089-71643	CATEGORY: 2

IN WITNESS WHEREOF, KDHE and the Owner have entered into and executed this Environmental Use Control Agreement through their duly authorized representatives as of this 28th day of September, 2009.

Kansas Department of Health and Environment

By: 

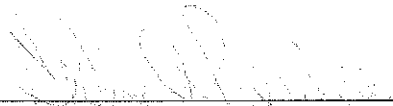
Roderick L. Bremby, Secretary

ACKNOWLEDGMENT:

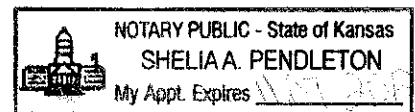
STATE OF KANSAS)
)ss:
COUNTY OF SHAWNEE)

BE IT REMEMBERED, on this 28th day of September, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Roderick L. Bremby, Secretary and authorized representative of KDHE, who is personally known to be such person who executed the above document on behalf of KDHE, and such person duly acknowledged the execution of the same to be his/her act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Shawnee County, Kansas, the day and year last written above.


Notary Public in and for said County and State

My Term Expires: 2011-05-01



DOCUMENT	PROJECT	PROPERTY
NUMBER: 08-EUC-0036	NUMBER: C4-089-71643	CATEGORY: 2

Corporation: **ONEOK, INC.** (d.b.a. Kansas Gas Service)

By: *RPM*

Date: 1/15/10

Print Name: R.F. MARTINOVICH

Title: COO, ONEOK

ACKNOWLEDGMENT:

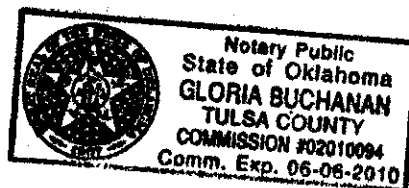
STATE OF Oklahoma
COUNTY OF Tulsa)ss:

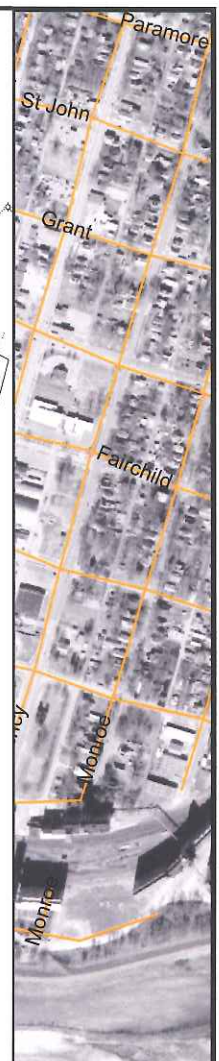
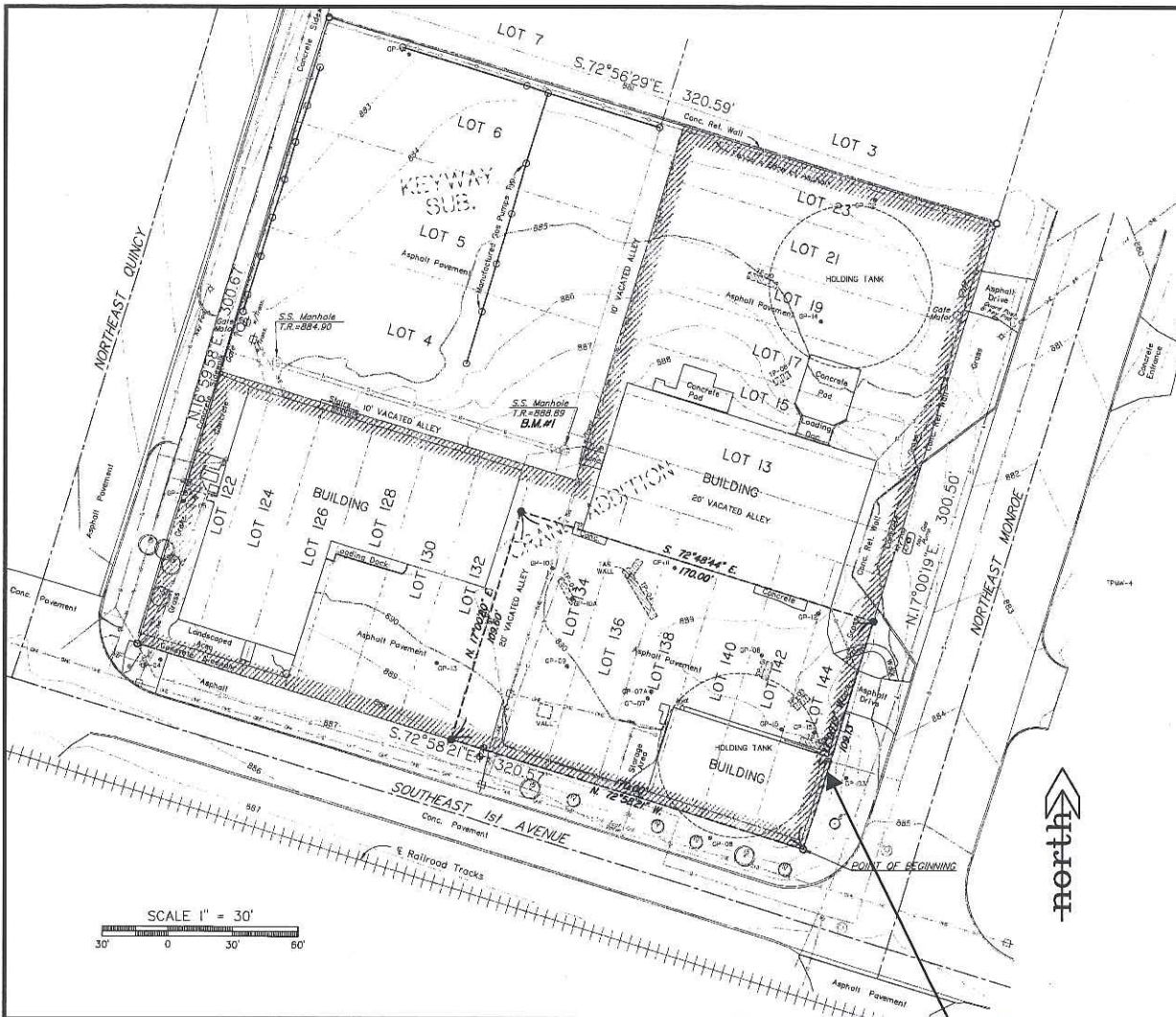
BE IT REMEMBERED, on this 15th day of January, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Bob Martinovich, authorized representative of ONEOK, INC., who is personally known to be such person who executed the above document on behalf of said corporation, and such person duly acknowledged the execution of the same to be his/her act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Tulsa County, Oklahoma, the day and year last written above.

Gloria Buchanan
Notary Public in and for said County and State

My Term Expires: 6-6-2010





TOPEKA MANUFACTURED GAS PLANT EASEMENT DESCRIPTION

A portion of Even Lots 134 through 144 and a portion of the 20-foot vacated alley lying adjacent to Lot 134, Cranes Addition to the City of Topeka, Shawnee County, Kansas, more particularly described as follows:

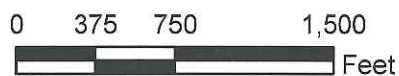
BEGINNING at the Southeast Corner of Lot 144, said Cranes Addition, thence on an assumed bearing of North $72^{\circ}58'21''$ West, along the Northerly line of Southeast 1st Avenue, a distance of 170.00 feet;

THENCE North $17^{\circ}00'20''$ East a distance of 109.60 feet;

THENCE South $72^{\circ}48'44''$ East a distance of 170.00 feet to a point on the Easterly line of said Lot 144;

THENCE, along said Easterly line of Lot 144, South $17^{\circ}00'19''$ West a distance of 109.13 feet to the **POINT AND PLACE OF BEGINNING**. Said tract contains 0.427 acres, more or less.

END DESCRIPTION



Map Prepared by KDHE

LEGEND

- Local Roads
- EUC Area Boundary

EXHIBIT A

FMGP - Topeka
Topeka, KS
08-EUC-0036